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***CIVILIAN OVERSIGHT OF POLICE OFFICERS IN TRINIDAD AND TOBAGO CHALLENGES AND SOLUTIONS**

A presentation by Master Ralph Doyle – Deputy Director of the Police Complaints Authority of Trinidad and Tobago.

INTRODUCTION

Mr. President and Officers of CACOLE, Mr. Moderator, Fellow Panellists, Delegates, Specially invited guests, permit me to begin my presentation* with a brief introduction to my country – Trinidad and Tobago – the beautiful twin island State in the West Indies located about 10° North of the Equator (and, about 8 miles east of Venezuela at the closest point).

We are a Republic within the Commonwealth, becoming independent (from Britain) in 1962 and amending our Constitution to Republican status in 1976. Interestingly, our capital Port of Spain is twinned with Canada's "Garden City" – St. Catherine's in the Niagara region, and, for another Canadian connection, Trinidad and Tobago gained its first Olympic Gold Medal at the Games of the XXI Olympiad held in Montreal in 1976 when Hasley Crawford won the Men's 100 metres final.

BACKGROUND

Fast forward to January 01, 2007 when the Police Complaints Authority Act No. 8 of 2006 ("the Act of 2006"/ "the Act") was proclaimed, repealing the Police Complaints Authority Act, 1993 ("the former Act") which had provided for **any** complaints against police officers to be sent by the (former) Police Complaints Authority to the Trinidad and Tobago Police Service ("TTPS") for investigation. The Act of 2006 distinctively established the (current) Police Complaints Authority ("The PCA"/ "the Authority") as an **independent** corporate body mandated, inter alia, to investigate criminal offences involving police officers, police

corruption and serious police misconduct and, to gather evidence that may be admissible in the prosecution of a person who is not a police officer for a criminal offence in relation to the Police Service – all of the foregoing **without the involvement of the police.**

INVESTIGATIONS

The Authority is empowered to conduct investigations on its own initiative or on receipt of complaints from a member of the public, **a police officer**, a public body or authority or the appropriate unit or disciplinary tribunal of the Police Service.

APPOINTMENTS

The PCA is comprised of a Director and Deputy Director appointed by the President of Trinidad and Tobago on the joint advice of the Prime Minister and the Leader of the Opposition. The Act states that a person appointed as Director and Deputy Director shall have at least ten years experience as an Attorney-at-Law. Further, **no person who is or was a police officer** may be appointed as Director or Deputy Director. The Authority's first Director and Deputy Director were appointed on December 29th, 2010.

FUNCTIONS

The Authority's statutory functions are:

- a) To investigate criminal offences involving police officers, police corruption and serious police misconduct;
- b) To undertake inquiries into, or audits of, any aspect of police activities for the purpose of ascertaining whether there is police corruption or serious police misconduct or circumstances that may be conducive to both;
- c) To monitor an investigation conducted by any person or authority in relation to any matter mentioned in paragraph (a) and to undertake audits of those investigations;

- d) To advise the Police Service and other public authorities on ways in which police corruption and serious police misconduct may be eliminated;
- e) To gather evidence that may be admissible in the prosecution of a person who is not a police officer for a criminal offence in relation to the Police Service and to furnish that evidence to the Director of Public Prosecutions, or where an authority outside the State is concerned, the Attorney General;
- f) To gather evidence that may be used in the investigation of serious police misconduct and furnish such evidence to the Commissioner of Police or the Police Service Commission for appropriate action;
- g) To gather evidence that can be used in the prosecution of a police officer involved in a criminal offence and furnish such evidence to the Director of Public Prosecutions;
or
- h) To perform any other functions that may be conferred on it by any other written law.

POWERS

In the performance of its functions the Authority's powers include the powers of a Commission of Enquiry and, the power to require any person to produce books, records, accounts, reports, or data, stored electronically or otherwise, to provide any information or to answer any question which the Authority considers necessary in connection with its investigations and, to have any facts, matters or documents relating to a complaint verified or otherwise ascertained by oral examination of the person making the complaint. The Authority may also enter and inspect any premises occupied or used by a public body or authority and inspect and take copies of any documents in the premises. Subject to obtaining a search warrant from a Court, the Authority may also enter private premises in furtherance of an investigation.

The powers and functions of the Authority may be exercised by-

- a) The Director or Deputy Director personally;
- b) Any person **not being a police officer** appointed by the Authority to conduct an investigation; or
- c) Any other person acting under and in accordance with the general or special instructions of either the Director or Deputy Director.

(POLICE) DEPARTMENT/DIVISION (?)

The Authority has been in operation for a little over three (3) years, however, despite the powers and functions referred to above, there are some fundamental challenges or issues which the Authority faces, starting with the misconception that the Authority is a department/division of the Trinidad and Tobago Police Service and that police officers investigate complaints within the Authority's remit. That misconception has been brought to the Authority's attention by persons who wish to make complaints but express concerns about the "police investigating the police" or, on occasions when persons enquire about the progress of complaints having been lodged with "the Authority" but which are actually complaints made to the Complaints Division of the Trinidad and Tobago Police Service ("TTPS"). Now, the Complaints Division of the TTPS was indeed created under the **former** Police Complaints Authority Act but, despite the repeal of that Act persons who make complaints to the TTPS about police officers still receive copies of their complaints officially stamped "POLICE COMPLAINTS DIVISION". The misconception may also be a result of the mandate and operations of the **former** Police Complaints Authority which sent **all** complaints about police officers to the Complaints Division of the TTPS for investigation **by the police**.

PUBLIC EDUCATION

In dealing with the issue, the Authority embarked on a nationwide public education initiative where, in meetings with the public, it has been emphasized that the Police

Complaints Authority is not a division or department of the Trinidad and Tobago Police Service and that under the Act of 2006 **no police officer** may investigate any complaints within the Authority's remit. Bearing in mind that the Act provides for complaints to be made to the Authority **by police officers**, the assurance has been given by the Authority that there should be no fear of victimisation as the Authority is not answerable to the Trinidad and Tobago Police Service in the performance of its functions and the exercise of its statutory powers. In fact, under Section 19 of the Act, the Authority is not subject to the direction or control of **any other person** in the performance of its functions and the exercise of its powers (Emphasis mine). Increasingly, the public (and police officers) are being made aware of the role, responsibilities and remit of the PCA in meetings, by information on the PCA's website www.pca.org.tt and, by the distribution in communities of informative literature on the Authority's purpose and operations.

CONFIDENTIALITY

I turn now to the matter of confidentiality with respect to the operations of the PCA.

Section 21(4) of the Act of 2006 provides as follows:-

“Notwithstanding any written law to the contrary, information and evidence obtained by the Authority in the performance of its function under this Act is confidential”.

And, by Section 47 (h)(iii) of the Act-

“A person who-without lawful justification or excuse – discloses confidential information – commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for five years”.

FREEDOM OF INFORMATION

The (above) statutory obligation of confidentiality faces the challenge of applications to the PCA under the Freedom of Information Act Chap.22:02 (“FOIA”) which gives members of the public a general right (with exceptions) of access to information in the possession of public authorities. The Police Complaints Authority is not a body exempt from the legal requirements to accede to requests made under the FOIA despite the aforesaid statutory obligation of confidentiality and the statutory powers of the PCA which include the performance of its functions **as if it were a Commission of Enquiry established for the purpose of the Commission of Enquiries Act** – Commissions of Enquiry being exempt under the FOIA.

RISKS

The risks of disclosure of confidential information and the attendant possibilities of compromising or prejudicing the very serious and sensitive matters under investigation or, of harm to complainants have resulted in the PCA seeking to be exempt from the provisions of the FOIA.

PROTECTION

The protection of complainants, witnesses and informants also challenges the operations of the PCA as the Authority needs to be designated as an “approved authority” under the Justice Programme Act. The Authority has made representations in this regard, and in the interim, has adopted certain measures.

POWERS, AUTHORITIES, PRIVILEGES ETC.

Now, the raison d’etre of the Police Complaints Authority Act is the investigation of criminal offences involving police officers or the monitoring or auditing of police activities and other related matters by an independent body. A corollary of this is that the investigating body should be vested with the necessary powers and immunities. In several

jurisdictions, (like) civilian oversight bodies carry out their investigative functions with the requisite powers, privileges and immunities. Thus, in Jamaica, by the Independent Commission of Investigations Act 2010, the Commissioner and the Investigative Staff of the Independent Commission of Investigations (INDECOM) in the exercise of their statutory duty have the like powers, authorities and privileges, as are given by law to a police constable.

In Barbados, (per that country's Police Complaints Authority Act), the (Barbados) Police Complaints Authority, its investigative staff and any other duly authorised person in the exercise of their duties have the same powers and privileges as are given by law to a police officer. Further afield, in the United Kingdom, the Police Reform Act 2002 provides that where designated staff members of the Independent Police Complaints Commission are not already possessed of the powers and privileges of a police constable throughout England and Wales and the adjacent United Kingdom Waters they shall for the purposes of the carrying out of investigations and for all purposes connected therewith have such powers and privileges throughout England and Wales and those waters.

In Trinidad and Tobago, under the Police Service Act, No. 7 of 2006 –

“Every police officer shall have all such rights, powers, authorities, privileges and immunities, and is liable to all such duties and responsibilities, as any constable duly authorised now has or is subject or liable to, or may have or be subject or liable to under any written or unwritten law”.

However, the civilian investigations officers of the PCA **who have been duly authorised to conduct investigations** are stymied in effectively carrying out their functions as they do not have the “authorities, privileges and immunities” of police officers.

The foregoing is particularly evident in those cases where the discharge of a police officer's firearm has resulted in the death of a civilian. The PCA's investigations officers cannot legally handle the firearm or send same to the relevant authority for testing, as Section 6(2) of the Firearms Act Chap:16:01 provides that –

“Notwithstanding any law to the contrary, a person may not have in his possession any prohibited weapon unless he is, and is, acting in the capacity of –

- a) a police officer;
- b) a member of the Defence Force;
- c) Director, Trinidad and Tobago Forensic Science Centre;
- d) any scientific officer designated by the Director, Trinidad and Tobago Forensic Science Centre;
- e) a Customs officer; or
- f) a prison officer.

Under the Firearms Act a prohibited weapon is defined, inter alia, as –

“any artillery or automatic firearm”.

The Authority's Director, Deputy Director or duly authorised officers are not included in Section 6(2) of the Firearms Act supra. In those circumstances, the Authority's investigators risk prosecution should they remove a firearm for testing or retrieve or receive any article for which the requisite immunity or privilege is not enjoyed. Legislative amendment is necessary.

INTERCEPTION OF COMMUNICATIONS ACT CH:15:08

Under Section 6(1) of the Interception of Communications Act, Ch.15:08 (“the Act”) – a person who intentionally intercepts a communication in the course of its transmission by

means of a telecommunications network commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars (\$500,000.00) and imprisonment for seven years. However, an “authorised officer” shall not be liable for the interception of communications in certain circumstances, and, under Section 5(1) of the Act the term “authorised officer” means the Chief of Defence Staff, the Commissioner of Police or the Director of the Strategic Services Agency. There are matters within the PCA’s remit, including police corruption and allegations of phone harassment wherein the Authority needs speedy technological access to telecommunications, records and/or materials but, the Authority’s Director, Deputy Director or duly authorised officers cannot access same independently as they do not enjoy the statutory exemption from liability under the Act.

This is very unsatisfactory especially when one considers other **local** legislation in which Immigration Officers, Customs Officers and Motor Vehicle Officers (who are all civilians) are clothed with the requisite powers and immunities of the police to assist them in fulfilling their respective statutory obligations. Accordingly, it is essential that amendments be made to the Interception of Communications Act to include the Director and Deputy Director of the Police Complaints Authority as “authorised” officers.

MONITORING/AUDITING FUNCTIONS

In addressing the above constraints on operations, the Authority utilises its statutory functions of monitoring or auditing investigations into criminal offences involving police officers, police corruption and serious police misconduct. In this connection, the Authority and its officers have been commended by the Director of Public Prosecutions for the level of professionalism exhibited in carrying out their functions. A recent editorial has also congratulated the Authority “for not dragging its feet in the investigation of the tragic shooting death” of a young man “at the hands of police officers”

CONCLUSION

The Authority submits that its continuous public education initiatives and the performance of its monitoring and auditing functions assist in building confidence and trust in the institution but, it is necessary for the following legislative amendments to be made:-

- An amendment to the PCA Act to include the provision of the powers, privileges, authorities and immunities of the police to the Authority and its Investigators.
- An amendment to the Interception of Communications Act, Chap.15:08 to enable the Authority and any person it authorizes to access information from any telecommunications network.
- An amendment to the Justice Protection Act, Ch:5:33 to include the PCA as an “approved authority” so that the necessary protection for witnesses can be accessed.
- An amendment of the Freedom of Information Act Chap.22:02 to include the PCA as an exempt body . This will be consistent with:-
 - a) S.21(4) of the PCA Act, which places the Authority under an obligation to keep **all** information confidential;
 - b) S.22(1) of the PCA Act which gives the PCA the powers of a commission of enquiry established under the Commissions of Enquiry Act “as if it were a commission of enquiry for the purpose of that Act” as, Commissions of Enquiry are exempted from the provisions of the Freedom of Information Act Chap.22:02.

The Authority has recommended the above amendments to the relevant authorities.

ACKNOWLEDGEMENT

On behalf of the Police Complaints Authority I wish to express sincere thanks to the President, Officers and Members of CACOLE for your invitation to participate in this panel on International Perspectives on Oversight.